

REMARKS/ARGUMENTS

Prior to entry of this Amendment, claims 12-15 and 22-25 were pending in this application. Claims 24 and 25 have been amended, no claims have been added, and previously withdrawn claims 1-11 and 16-21 have been canceled herein. Therefore, claims 12-15 and 22-25 remain pending. Applicant respectfully requests reconsideration of these claims for at least the reasons presented below.

35 U.S.C. § 112 Rejection

Claims 24 and 25 have been rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. More specifically, the Office Action has objected to the use of the word "similar" in the phrases "similar in song structure" and "similar in the number of instruments and vocal components" as being indefinite. Amendments have been made herein that are thought to overcome the reasons for the rejection. More specifically, the phrase "substantially similar" has been changed to "substantially the same." Furthermore, the Applicants submit that these amendments are made only to correct formal matters and add no new matter necessitating a new search. Therefore, the Applicants respectfully request entry of the amendment and withdrawal of the rejection.

35 U.S.C. § 102 Rejection, Alferness

Claims 12-14, 22, and 23 have been rejected under 35 U.S.C. § 102(e) as being anticipated by U. S. Patent No. 7,078,607 to Anton Perry Alferness (hereinafter "Alferness"). The Applicant respectfully submits the following arguments pointing out significant differences between claims 12-14, 22 and 23 submitted by the Applicants and Alferness. The Applicant

respectfully submits the following arguments pointing out significant differences between claims 12-14, 22 and 23 submitted by the Applicants and Alferness.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." MPEP 2131 citing *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Applicants respectfully argue that Alferness fails to disclose each and every claimed element. For example, Alferness fails to disclose, either expressly or inherently, a storage medium having audio tracks comprising complete songs and a number of different versions for at least one of the complete songs.

As noted previously, Alferness is directed to "music playback software, and, more specifically, to dynamically changing music and sound compositions." (Col. 1, lines 13-15) Under Alferness, "a script tool is used to create scripts that are used to play back a song. The scripts are user definable and may, for example, define a specific order to play the components, define the components that may be played next to each other during the playback." (Col. 1, lines 60-65) However, Alferness does not disclose, expressly or inherently, a storage medium having audio tracks comprising complete songs and a number of different versions for at least one of the complete songs. Rather, Alferness discloses storing individual "sound elements" such as vocals, guitar, bass, drums, etc. (Col. 2, lines 55-58) These elements are mixed according to the controlling script when a selected song is played back. (Col. 3, lines 34-46, col. 6, lines 13-34, col. 6, line 61 - col. 7, line 7)

That is, Alferness does not store complete songs in the individual tracks. Instead, Alferness stores individual sound elements in each track, e.g., a vocal track, a guitar track, a drums track, etc. Furthermore, under Alferness, the different versions of complete songs are created during playback but are not stored on the media as different versions of complete songs. For example, if a track of the storage media of Alferness were to be played without using the control script, a complete song would not be played. Rather, the individual "sound element"

stored in that track would be played. That is, the vocal track would play but the guitar track, drum track, etc. being stored on a different track, would not be played. Under Alferness, it is only when the individual tracks are played and mixed according to the control script executed by the playback engine that complete songs results. Thus, Alferness does not disclose, explicitly or inherently, a storage medium having audio tracks comprising complete songs and a number of different versions for at least one of the complete songs.

In response to the argument that Alferness does not disclose a storage medium having audio tracks comprising complete songs and a number of different versions for at least one of the complete songs, the Office Action points to figures 2 and 3 illustrating "an exemplary computing device that may operate to perform aspects of [Alferness]" (col. 8, lines 66-67) and "an exemplary user device" (col. 10, lines 1-2) respectively. The Office Action also points to figures 6 and 7 illustrating "a process flow for creating and playing dynamically changing music" (col. 6, lines 10-12) and "a process for creating scripts" (col. 6, lines 48-49) respectively. Regarding figures 6 and 7 of Alferness, the Applicants respectfully contend that the process described (col. 6, line 10 - col. 7, line 7) is a process by which the individual "sound elements", e.g., guitar track, vocal track, etc., but not complete songs, and a control script are created and recorded in individual tracks of the media.

The Office Action also argues that "the original audio tracks (songs) [of Alferness] could be mixed with vocals to create a first version, the original audio tracks (songs) could be mixed with guitar to create a second version or the original audio tracks (songs) could be mixed with base to create a third version." However, the Applicants maintain, as explained above, that the tracks of Alferness contain "sound elements", not complete songs and the mixing of complete songs is performed at playback under control of the script. Furthermore, regarding the suggestion that Alferness "could" be made to perform the claimed elements, the Applicants respectfully reiterates that to find anticipation under 35 U.S.C. § 102(c) the Office Action must

demonstrate that the reference discloses each and every claimed element rather than argue that the reference could be made to perform the elements.

Claim 12, upon which claims 13-15 depend, recites in part a "storage medium comprising: N number of audio tracks wherein each audio track comprises a complete song; [and] V versions of at least one of the N audio tracks." Alferness does not disclose, expressly or inherently, a storage medium having audio tracks comprising complete songs and a number of different versions for at least one of the complete songs. Rather, Alferness discloses storing individual "sound elements" such as vocals, guitar, bass, drums, etc. and mixing these elements according to the controlling script when a selected song is played back. For at least these reasons, claims 12-15 should be allowed.

Claim 22, upon which claims 23-25 depend, recites in part "recording a song base version; mixing a first version of the song base version; mixing a second version of the song base version; mixing a third version of the song base version; [and] encoding the base, first, second and third versions on a storage medium." Alferness does not disclose, expressly or inherently, mixing a first version of the song base version, mixing a second version of the song base version, mixing a third version of the song base version, and encoding the base, first, second and third versions on a storage medium. Rather, Alferness discloses storing individual "sound elements" such as vocals, guitar, bass, drums, etc. and mixing these elements according to the controlling script when a selected song is played back. For at least these reasons, claims 22-25 should be allowed.

35 U.S.C. § 103 Rejection, Alferness

Claims 24 and 25 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Alferness. The Applicants respectfully requests withdrawal of the rejection and allowance of the claims for at least the reason that claims 24 and 25 both depend upon claim 22 that is thought to be allowable as described in detail above.

CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance and an action to that end is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 303-571-4000.

Respectfully submitted,

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